

*Detroit City Council Rules and Procedures for
Hearings and Related Proceedings, for Forfeiture of
Elective or Appointed City Officers*

CHAPTER 1
GENERAL PROVISIONS

Sec. 1 Administrative procedures; short title.

These rules shall be known and may be cited as the “City of Detroit Rules and Procedures for Hearings and Related Proceedings, for Forfeiture of Elective or Appointed Office”

Sec. 2 Definitions

“Agency” means any structure of government as defined in the City Charter, Section 2-105.1.

“City Charter” means the Charter of the City of Detroit, as adopted by the vote of the people on November 5, 1996, effective, January 1, 1997.

“City of Detroit” means the municipal corporation chartered as the City of Detroit within the State of Michigan

“Council” means the entire body of elective officers comprising the Detroit City Council, acting as an entity. The Council shall act as an entity when it so decides, based upon a vote of the majority of Members then seated.

“Court” means the Third Judicial Circuit Court of the State of Michigan.

“Court Rules” means the Michigan Court Rules of 1985.

“Expert Witness” means a witness qualified as an expert by knowledge, skill, experience, training, or education that may testify thereto in the form of an opinion or otherwise if (1) the

testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

“Forfeiture” means a loss of and removal from elective or appointive office. It also means the process, initiated by the Council, the purpose of which is to bring about the aforementioned loss of office, pursuant to Section 2-107 of the City Charter, of an elective or appointive official of the City of Detroit. The determination by Council of forfeiture of office is the initial step in the process of forfeiture that is ultimately resolved in a civil proceeding in Circuit Court - i.e. Council acts as a decision maker in the exercise of its discretion as to whether to initiate the forfeiture process.

“Forfeiture Proceeding” means any proceeding, conducted pursuant to Section 2-107 of the City Charter and pursuant to these Rules, at which evidence (including testimony, exhibits or both) is presented, arguments made or action taken to determine whether the Council can or should initiate the process of forfeiture of elective or appointive office.

“Material Witness” means a person who has pertinent and significant information that is sufficiently significant so as to affect the outcome of the forfeiture proceedings.

“Notice” means a written or electronic record that informs a party or person of past or future action pertinent to that party or person in connection with a forfeiture proceeding.

“Person” means an individual, partnership, association, corporation, limited liability company, limited liability partnership, governmental subdivision, or public or private organization of any kind.

“Petition” means a statement that presents the grounds, legal bases and reasons for the initiation of the forfeiture process of elective or appointed office under the City Charter.

“Record” means information that is inscribed on a paper or electronic medium.

“Respondent” means the person whose elective or appointed office is sought to be forfeited.

“Rules of Evidence” means the Michigan Rule of Evidence.

Sec. 3 Construction

These rules shall be construed liberally within the spirit and meaning of Section 1-103 of the City Charter so as not to repeal additional requirements imposed by law.

CHAPTER 2 **INITIAL PROCESS**

Sec. 1 Preliminary Procedures

Forfeiture proceedings can be undertaken when:

- a) A interested party, agency or entity files a Petition that states grounds for forfeiture of elective or appointive office;
- b) The Council passes a Resolution that finds a basis for forfeiture of elective or appointed officers and calls for the commencement of proceedings to initiate said forfeiture;
- c) The Council or special counsel, acting on its behalf, presents a Petition calling for the forfeiture of elective or appointed office of an elective or appointed official; and

Sec. 2

The Respondent may if he or she chooses, file with the Clerk of the Council, a response to the Petition before the date set for hearing. Additional time to respond, if needed, may be sought upon written request to the Council.

Sec. 3 Contents of the Petition for Forfeiture

The Petition shall provide a detailed basis for the request for the initiation of forfeiture, as to:

- a) **Factual Basis** – the facts and factual foundation on which the claim for forfeiture of elective or appointed office is based;
- b) **Legal Basis** – the specific provisions of the City Charter that are the basis of a claim that elective or appointed office should be forfeited;

CHAPTER 3 **PROCEDURES**

Sec. 1 Notice of public hearings; appearances, pre-hearing answers; adjournment.

Respondent shall be afforded an opportunity for a public hearing and reasonable notice of the hearing.

- a) The Respondent shall be given an opportunity for a hearing, the time and place to be set by Council.

- b) Notice of the hearing before Council must be published in one (1) or more daily newspapers of general circulation in the city at least one (1) week in advance of the hearing.
- c) The Respondent shall be given a reasonable notice of the hearing, prior to publication of the hearing and the notice shall include:
 - 1. A copy of the Council Resolution calling for forfeiture or a copy of the Petition for forfeiture, or both if applicable;
 - 2. A set of these rules, accompanied by notice as to the date, time and place of the hearing;
- d) Such hearing shall take place within a reasonable period of time and not unduly delayed. Council shall have the authority to adjourn a matter for good cause shown, there being no prejudice to Respondent or any other interested party. In no case can the Council's decision as to a Forfeiture Petition take longer than 6 months from the date the Petition is filed with the Clerk of the Council, unless a longer period is stipulated between the Council and Respondent.
- e) If the Respondent fails to appear at the hearing, either individually or through his or her attorney, after proper service of notice, the Council, if no adjournment is granted, Council may determine that Respondent has waived the opportunity for a hearing, and may proceed to render a decision in the absence of the Party.

Sec. 2 Application of rules and procedures; incorporation of general court rules

Respondent shall be afforded due process of law, including the opportunity to be represented by counsel, to conduct discovery, to issue subpoenas or request that a subpoena be issued, to call witnesses, to cross-examine opposing witnesses and to present oral and written arguments on the law and facts. The Michigan Court Rules as applied in a nonjury civil matter in circuit court shall be followed, except as is specifically mentioned in this document.

- a) **Subpoenas; issuance; revocation.** A Respondent may request that Council issue subpoenas, pursuant to Section 4-110 of the City Charter, requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence and documents in their possession or under their control.
- b) **Discovery** - A Respondent, if he or she requests, shall be entitled to receive the following information, when so ordered by the Council, acting with the advice of its legal and/or legal advisor:
 - 1. A description of the evidence that will be introduced against the Respondent;

2. A list of all witnesses that will be called in the hearing, including names addresses, job titles and a brief description of the testimony of each witness;
 3. All prior sworn testimony or prior statements given to Council or its Special Counsel, or in the possession of any other charging party;
 4. All documents, described in subparagraph 2(b)(1) above.
 5. A Bill of Particulars as to the charges contained in the Forfeiture Petition.
- c) **Examination of witnesses.** Council, other charging party, if any, or Respondent may call witnesses and conduct cross-examination of witnesses. Respondent shall be afforded the opportunity to confront witnesses against him or her and call witnesses in his or her defense, with the following limitations: .
1. If statements or prior testimony is offered against a Respondent, he or she may call, through subpoena or otherwise, the witness whose statement or prior testimony has been used and cross-examine that witness;
 2. Council, other charging party, if any, and Respondent may call only material witnesses and expert witnesses.
 3. The Council is the body that decides whether to initiate forfeiture proceedings. Therefore, a Council Member may only be called and questioned as a witness, upon a showing by the charged Party, that such Council Member
 - i) is a material witness, and
 - ii) has special knowledge of disputed evidentiary facts, not otherwise readily available, publicly disclosed or revealed, in documents and exhibits introduced during the hearing.

Said Council member, if called as a witness, may be questioned only as to pertinent matters set forth in 3(ii), above.
 4. If Respondent intends to call witnesses, a witness list must be served upon the Council or other charging party, if any prior to the hearing.
- d) **Limitations on Examination of Witnesses:** The opportunity to examine and cross-examine witnesses shall be construed liberally. However, the Council may limit or prohibit examination or cross examination that is harassing, unduly repetitive, irrelevant, or only marginally relevant.

- e) **Oaths;** An officer or authorized person shall administer an oath or affirmation to a witness in a matter before the Council.
- f) **Motions -** The Respondent, Special Counsel to the Council or other charging party, if any, may submit motions, dispositive and otherwise, at any time after the Forfeiture Petition is filed and served. All motions must be served upon the Council and any other charging party, if any. When time permits, all motions will be filed no less than one week prior to the scheduled public hearing. A reasonable period of time to file papers in written opposition thereto, shall be provided. The Council shall decide all motions within a reasonable period of time so as to avoid undue delay.

Sec. 3. Evidence; admissibility, objections; submission in written form; depositions

The Rules of Evidence as applied in a nonjury civil matter in circuit court shall be followed as far as practicable, but the Council may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons, in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Privilege, properly asserted within applicable legal principles, shall be respected:

- a) **Copies.** Documentary evidence may be received in the form of a copy or excerpt, if the original is not readily available, or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original when available.
- b) **Depositions;** A deposition may be used in lieu of other evidence when taken in compliance with the general court rules.
- c) **Written answers; oral argument.** The Parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact.
- d) **Official notice of facts; evaluation of evidence.** The Council may take official notice of judicially cognizable facts, and may take notice of general, technical or scientific facts within a City agency's specialized knowledge. The Council may use its experience, technical competence, specialized knowledge as well as common sense in the evaluation of evidence presented to it.
- e) **Stipulations; disposition of matters; methods.** The Respondent, council and/or charging part, if any, may by a stipulation in writing, noticed and submitted to the Council, may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. The Respondent, council and/or charging part, if any, are encouraged to agree upon all facts when practicable. Except as otherwise provided by law, disposition may be made of a matter by stipulation, agreed settlement or remedy, judicial findings, verdicts, consent orders or other judicial records, waiver, default, or other method agreed upon by the parties.

Sec. 4 Presiding officers; designation.

Hearings shall be conducted in an impartial manner by the entire Council. The President of the City Council shall serve as the Presiding Officer, pursuant to Section 4-104 of the City Charter.

- a) **Presiding officer; powers and duties.** The Presiding Officer may do all of the following: administer oaths and affirmations, sign and issue subpoenas in the name of the Council, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence, provide for the taking of testimony by deposition, regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider simplification of the issues by consent of the Parties.
- b) **Legal and/or Judicial Advisor.** The Council may appoint a legal or judicial Advisor to assist and advise the Council and/or Council President in ruling on Motions of the Parties, objections to evidence and other issues and to make procedural recommendations to the Presiding Officer during the course of the hearing. The Advisor shall be licensed to practice law in the State of Michigan and may be a retired judicial officer. The Advisor shall not have any authority or power to render or vote upon a decision.

Sec. 5. Decisions and orders:

- a) **Decisions on motions and objections.** All motions and objections that are brought before Council, may be delegated to the Council's Legal and/or Judicial Advisor for a recommendation. Council will not be bound by the recommendation of the Advisor but may take it into account.
- b) **Decision by Council.** There must be a quorum of Council present in order for Council to conduct a Forfeiture Proceeding, or any portion of said Forfeiture Proceeding. Further, there must be a quorum of Council present in order to conduct a vote, preliminary or final, on the issue of formally initiating the process of forfeiture of elective or appointive office, through a final forfeiture decision under Section 2-107 of the Charter. A decision of the Council must be made by a majority of the sitting elected Members of the Council, in accordance.
- c) **Methodology for decision making.**
 - 1) **Burden of proof:** In any action before Council to initiate forfeiture, the petitioning party must prove his, her or its case by clear and convincing evidence. This means that the petitioner has the burden to prove, by clear and convincing evidence, that the elected official against whom forfeiture is sought, either:

- i. Lacks any qualifications imposed by law or the City Charter; or
- ii. Has violated any provision of the City charter, punishable by forfeiture; or
- iii. Has been convicted of a felony while holding office.

For purposes of any forfeiture proceeding against an elective or appointed official, the clear and convincing evidence is that evidence that proves any of the above stated grounds for forfeiture, more than outweighs the evidence against it. To be clear and convincing, the Council, acting as decision maker, must be satisfied that it is substantially more likely than not that one of the above stated grounds has been proven.

- 2) A final decision or order of the Council shall be made, within a reasonable period, in writing or stated in the record and shall include Findings of Fact and Conclusions of Law. Findings of Fact shall be based exclusively on the evidence and on matters officially noticed.
- 3) If a Party submits proposed Findings of Fact that would control the decision or order, the decision or order shall include a ruling upon each separate proposed Finding. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record, as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to each Party and to his or her attorney of record.

Sec. 6. Official record of hearings. The Council shall retain a qualified notary/court reporter to prepare the entire record of the proceedings, unless Parties to the proceedings for judicial review stipulate that the record be shortened. The Council may permit subsequent corrections to the record, for good cause shown. The Council Clerk shall certify the record as the official record of the proceedings and forward them to a reviewing court, if any.

CHAPTER 4

JUDICIAL REVIEW

Section 2-107 of the Charter states that “(d)ecisions made by the city council under this section (forfeiture of office) are subject to judicial review in a hearing de novo.” All such procedures shall go forward under the Court Rules, laws, and Constitutions of the State of Michigan and the United States.